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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of)

Computer III Further Remand)

Proceedings: Bell Operating)

Company Provision of Enhanced)
Services)

CC Docket No. 95-20

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REPLY COMMENTS OF THE
NEWSPAPER ASSOCIATION OF AMERICA

Respectfully submitted,

NEWSPAPER ASSOCIATION OF
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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY	1
II. THE BOCS HAVE NOT MADE A SHOWING THAT INTEGRATION OF ENHANCED SERVICES WITH BOC BASIC SERVICES WILL SERVE THE PUBLIC INTEREST	6
III. THE BOCS GROSSLY OVERSTATE THE ALLEGED COSTS OF STRUCTURAL SEPARATION BY INCLUDING IRRELEVANT EXPENSES AND IGNORING POTENTIAL COST SAVINGS	11
IV. THE MEANS OF DISCRIMINATION ARE VARIED AND NEARLY IMPOSSIBLE TO CONTAIN WITHOUT STRUCTURAL SEPARATION	14
V. CONCLUSION	20

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**REPLY COMMENTS OF THE
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The Newspaper Association of America ("NAA"), by its attorneys, respectfully submits this reply to the initial comments submitted in this docket.

I. INTRODUCTION AND SUMMARY

The question presented in this proceeding is an important one: Recognizing that the Bell Operating Companies ("BOCs") retain monopoly power in local service, how can regulators permit them to participate in competitive markets, such as the enhanced services market, while containing the risk that they will exploit their monopoly power? Twice, the Ninth Circuit has remanded this proceeding because the Commission's attempt to eliminate the requirement that BOC enhanced services be provided through a

separate subsidiary failed to respond to this central question.¹ We respectfully urge the Commission to heed those signals and accept the necessity of structural separations.

Enhanced service providers ("ESPs") are dependent upon the BOCs for access to the local exchange to reach their subscribers and customers. For electronic publishers, the BOCs provide the only efficient, reliable and ubiquitous two-way channel through which an information supplier can present time-sensitive reports or information on demand to consumers.² A newspaper publisher cannot provide online news to subscribers if the communications link between the publisher and the subscriber is unavailable or impaired. In short, access to the BOC's network is an essential facility for any information service provider.

No commenter in this docket disputes that BOC services remain essential facilities for enhanced services. Recognition of this fact must be central to any regulatory scheme allowing the BOCs to participate in the enhanced service market. As Judge Harold Greene recently reemphasized:

The first question must necessarily be whether the Regional Companies have retained monopoly control of an "essential facility". . . . It was their control of [such essential facilities] that gave the Bell System its power over the competition. That control enabled the System to foreclose or impede interconnection to its network of lines of its long distance competitors and of the equipment produced by its manufacturing rivals. It also made possible the subsidization of one activity with the

¹ *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); *California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*).

² Many of NAA's members provide electronic versions of their newspapers. In addition, NAA members offer a variety of other enhanced services, including online information databases, audiotext services, and enhanced classified advertising.

profits achieved in another. *As long as the Regional Companies retain these same bottlenecks, the potential for the same or similar anticompetitive conduct is plainly still present.*³

BOC participation in competitive markets may bring some potential benefits, but it also carries with it serious dangers of anticompetitive activity. The regulatory response to BOC entry must acknowledge and adequately address these dangers.

In its opening comments, NAA urged the Commission to use this remand as an opportunity to reexamine, without any preconceptions from *Computer III's* troubled past, the costs and benefits of structural separation.⁴ NAA pointed out that the costs and benefits of various regulatory regimes may depend upon the type of enhanced service to be provided.⁵ Accordingly, NAA urged the Commission not to rely solely on BOC arguments concerning voice mail services, but rather to consider each type of enhanced service individually.⁶ It is the burden of those who wish to change the regulatory status quo, the BOCs in this instance, to demonstrate a convincing public policy reason to abandon the protection that structural separation provides for these services.⁷

³ *United States v. Western Elec. Co.*, slip op. at 4-5, Civ. No. 82-0192 (HHG) (D.D.C. Apr. 28, 1995) (quoting *United States v. Western Elec. Co.*, 673 F. Supp. 525, 536 (D.D.C. 1987)) (emphasis added) (hereinafter *Cellular Interexchange Modification*).

⁴ NAA Comments at 2.

⁵ *Id.* at 7-8.

⁶ *Id.*

⁷ *Cf. Motor Vehicle Mfrs. Assn. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 41-42 (1983) (presumption that agency's "settled rule" represents the best means to achieve agency policies).

The BOCs have failed to meet this burden. First, they continue their narrow focus on voice mail services, admitting in the process that voice mail is the only enhanced service market they have sought to enter in any meaningful way. They have not shown that other BOC enhanced services, such as electronic publishing, are impeded by the separate subsidiary requirement. Moreover, even in the voice mail environment, significant evidence of BOC abuses exists, including admissions by two of the BOCs that the only "efficiency" they derive from integration is the ability to boost their marketing of enhanced services by exploiting their monopoly in basic services.⁸ Thus, the BOCs have not presented a showing to support their plea for wholesale abandonment of the protection afforded by structural separation.

In addition, the BOCs grossly overstate the costs of structural separation. They ignore the fact that their actions demonstrate that the benefits of structural separation outweigh any potential costs in at least some contexts. Further, the BOCs analyze structural separation for enhanced services as a stand-alone proposition, ignoring any efficiencies that could be generated from combining their enhanced services activities with one or more existing corporate affiliates, or with affiliates likely to be created to provide cellular or (assuming Court or Congressional approval) landline long distance services. Compounding the above overstatement of structural separation costs, the BOCs seek to include grossly inflated one-time costs of "reimposing" a structural regime, ignoring the fact that, but for the BOCs' interim waiver, structurally separate

⁸ See, *infra*, pp. 8-9.

operations are the status quo. Whatever cost may be associated with returning to the status quo after a waiver, it should not influence policy. To allow otherwise would permit the BOCs to bootstrap an interim waiver into a change in the rule itself.

Finally, despite the BOCs' platitudes that enhanced services are "competitive," the record shows that the means of discrimination available to the BOCs are varied and nearly impossible to contain in an environment of non-structural safeguards. There is significant evidence of specific BOC abuses of their local exchange monopoly and of industry group procedures, such as those of the Information Industry Liaison Committee ("IILC"). The continued availability (and use) of these means counsels against the diminution in protection that would result from abandoning structural separation as a regulatory tool. Accordingly, NAA submits that the Commission should continue to require the BOCs to provide enhanced services through a subsidiary that employs separate personnel, uses its own facilities or facilities obtained pursuant to the BOCs' tariffs, and that undertakes separate marketing and customer support. This measure of protection is needed to minimize the risk that the BOCs will exploit their control over the local service bottleneck in ways that are antithetical to open competition.

II. THE BOCS HAVE NOT MADE A SHOWING THAT INTEGRATION OF ENHANCED SERVICES WITH BOC BASIC SERVICES WILL SERVE THE PUBLIC INTEREST

The Ninth Circuit's decision reinstates the enhanced service rules provided in *Computer II*.⁹ Thus, those who wish to move the status quo away from the *Computer II* rules must present a showing that integration will serve the public interest. They must show both harms from a structural separation requirement and public interest benefits from integrated enhanced services.

The BOC submissions in this docket do not show that removal of the separate subsidiary requirement will yield more public interest benefits than result from the *Computer II* rules. First, there is no merit in the claim that integrated enhanced services have been proven to be beneficial because enhanced services markets are "competitive" today.¹⁰ The BOCs making this argument admit that they do not participate in any of those markets except voice mail.¹¹ Therefore, the competitiveness of these markets says nothing about the efficacy of a non-structural regime. If BOCs are not themselves participants in a given market, the risk of anticompetitive action by the BOCs is minimal, because there is no BOC entity to

⁹ NAA Comments at 9; MCI Comments at 11; ITAA Comments at 12; *see Georgetown Univ. Hosp. v. Bowen*, 821 F.2d 750, 757 (D.C.Cir. 1987); *Action on Smoking & Health v. CAB*, 713 F.2d 795, 797 (D.C.Cir. 1983).

¹⁰ Southwestern Bell Comments at 10; Bell Atlantic Comments at 5.

¹¹ Southwestern Bell Comments at 8; Bell Atlantic Comments at 5 n.6. Even in the voice mail market, there is significant evidence that the BOCs have abused their basic service monopoly to favor their own enhanced services division.

benefit from discrimination or cross-subsidization. As a result, one would not expect the BOCs to have taken actions to impede competition in these markets.

Moreover, the BOCs do not deny that ESPs in these markets are dependent upon access to BOC facilities and services in order to provide their services. Thus, even these competitive markets would be vulnerable to BOC abuses, should the BOCs decide to enter the market. The current state of these markets is irrelevant, therefore, as long as the BOCs' ability to discriminate still exists. Because the BOCs are not themselves competitors in the market, they may not (yet) have the incentive to act on that ability.

Second, the BOCs repeat their overemphasis on the voice mail market, and once again fail to identify any efficiencies to be gained by integration of any other specific enhanced services. Without this evidence, there is no justification for concluding that removal of the structural safeguard for services other than voice mail will yield any public interest benefits. The Commission cannot conclude that removal of the structural separation requirement will benefit the electronic publishing market, for example, because there is no evidence that integration of this service will provide any efficiencies at all, much less sufficient efficiencies to outweigh the diminution of protection that would result from removal of the requirement. As NAA explained in its initial comments,¹² electronic publishing can and should be provided through a separate subsidiary.

¹² NAA Comments at 8-9.

A corollary to the conclusion that no efficiencies can be gained from integration is that the separate subsidiary requirement does not impose a "cost" on these BOC enhanced services. That is, nothing is sacrificed by providing these services with separate personnel and facilities. It does not follow, as some BOCs have argued,¹³ that the lack of efficiencies means the dangers of discrimination or cross subsidization do not exist. These threats will continue for as long as the BOCs retain bottleneck power in local services. The incentive to discriminate derives from the BOCs' incentive to gain an upper hand in competitive markets, not from the presence or absence of economic efficiencies. As long as ESPs remain dependent upon access to the BOCs' networks, they will be vulnerable to BOC actions that threaten that access.

Finally, even the "efficiencies" alleged to flow from integrated operations do not serve the public interest. Notably, the BOCs have abandoned any claims of technical efficiencies to be gained by integrating basic and enhanced network functionalities.¹⁴ Instead, they repeatedly tout the "efficiency" of joint marketing of basic services with the BOCs' enhanced services. As NAA warned in its initial comments, this "efficiency" really is an anticompetitive exploitation of the BOCs' monopoly position in order to favor their own enhanced services over those of competitors.¹⁵ It does not serve the public interest to allow the monopoly provider to leverage its power into an adjacent competitive market in this way.

¹³ US West Comments at 11-12; Southwestern Bell Comments at 32.

¹⁴ MCI Comments at 14-15.

¹⁵ See NAA Comments at 8-9.

The BOCs are surprisingly candid in admitting the advantage they gain from this exploitation. BellSouth emphasizes that customers view voice mail as a service to be obtained "by calling their 'telephone company' and ordering it."¹⁶ In addition, Bell Atlantic admits that most consumers do not distinguish between "basic" and "enhanced" services when they call Bell Atlantic for service.¹⁷ In combination, these two facts provide the BOCs with a competitive windfall, which is unavailable to any other ESP. Joint marketing allows the BOCs, and only the BOCs, to profit from the customer who calls the "telephone company" (because he has to) and orders an enhanced service, unaware that the service he is ordering is not a "basic" service. In a regulatory regime permitting integrated BOC services, the BOC receives this sale only because it is the monopoly provider of local services, not because of its marketing skill or a superior competitive product. In a structural separation environment, by contrast, the consumer is made aware that the service requested is not required to be purchased from the "telephone company" and is available instead from a variety of sources. All ESPs, not just the BOCs, have an opportunity to display their superior marketing skill or superior product in order to receive the customer's business.

Joint marketing in these circumstances is an abuse of the monopoly even if, as Bell Atlantic claims, customers know that voice mail is "optional."¹⁸ Awareness that a service is "optional" does not mean that the consumer is aware that the service can be

¹⁶ BellSouth Comments at 66.

¹⁷ Bell Atlantic Comments at 18.

¹⁸ *Id.*

obtained from competing suppliers and need not be ordered from their "telephone company." For example, many other basic services -- such as touch tone service or call waiting -- are "optional" services, yet they must be obtained (if the consumer wants the service) from their "telephone company." Bell Atlantic and BellSouth benefit unfairly each time a consumer, through confusion, orders an "optional" enhanced service from the "telephone company."¹⁹

The benefits of structural separation were reaffirmed just last month, when Judge Greene granted a modification of the MFJ to permit the BOCs to provide cellular long distance services.²⁰ This modification was conditioned on, *inter alia*, the BOCs providing such services through an entity that is "physically and operationally separate" from the BOCs' local telephone services and facilities and upon a prohibition on BOC exchange personnel jointly marketing cellular interexchange services.²¹ As the court explained, physical and operational separation is "designed to reduce the risk of discrimination in the provision of interexchange access."²² Although the Court recognized that structural separation, by itself, is not a "cure-all," it is beneficial because it would, at a minimum, "complicate" attempted abuses of the BOC

¹⁹ To the extent that there are legitimate economic efficiencies in the inbound telemarketing context, the Commission should require that these be made available on non-discriminatory terms to all enhanced service providers.

²⁰ *Cellular Interexchange Modification* at 15.

²¹ *Id.* at 15-20.

²² *Id.* at 16.

monopoly.²³ The prohibition on joint marketing by cellular exchange personnel was viewed by the Court as "probably the most important of the proposed conditions" because it aids the consumer by facilitating separate price and service comparisons and provides competitors with "a genuine opportunity to compete for customers' business."²⁴ Nothing presented in this docket should lead the Commission to a different conclusion in the enhanced service context.

III. THE BOCS GROSSLY OVERSTATE THE ALLEGED COSTS OF STRUCTURAL SEPARATION BY INCLUDING IRRELEVANT EXPENSES AND IGNORING POTENTIAL COST SAVINGS

As demonstrated above, the BOCs have not presented sufficient evidence of the benefits of non-structural substitutes. In addition, they have inflated the alleged costs of structural separation in two significant ways.

First, by misinterpreting *California III*, the BOCs erroneously focus on the cost of "reimposing" structural separation. As a result of *California III*, which vacated the Commission's orders eliminating the structural separation rule, BOC enhanced services are subject to the *Computer II* separate subsidiary rules. The BOCs currently provide existing enhanced services (mostly voice mail) on an integrated basis pursuant to an interim waiver of these rules.²⁵ The BOCs' expenses to return to compliance with the

²³ *Id.* at 17.

²⁴ *Id.* at 19-20.

²⁵ *Memorandum Opinion and Order, Bell Operating Companies' Joint Petition for*
(continued...)

Commission's rules upon expiration of the waiver, therefore, are not "costs" that should be relevant to the Commission's analysis. As MCI notes, to consider the BOCs' expenses to be a cost would allow the interim waiver to eviscerate the rule itself.²⁶

Second, the BOCs inflate the cost of using a separate entity for enhanced services by assuming that this entity must be a stand-alone business. This misinterprets the meaning of a "separate" subsidiary. The subsidiary need only be separate from the BOCs' local monopoly; it is not required to be separate from other non-regulated businesses the BOCs are engaged in. Significant cost savings can be obtained by combining corporate and administrative costs with those of one of the BOCs' existing affiliates. For example, by using the senior officers, computer equipment, and office space currently used for Yellow Pages directory publishing, the BOCs could significantly save on the costs associated with providing electronic publishing through a "separate" subsidiary. Indeed, many of the one-time costs of establishing a separate subsidiary have already been incurred, and would not need to be repeated if the enhanced service operations were combined into an existing subsidiary.

Similarly, it is highly likely that a "separate" entity will be required for any interexchange services the BOCs are permitted to offer. Proposals now under

²⁵(...continued)

Waiver of Computer II Rules, DA 95-36 (CCB Released Jan. 11, 1995). The Bureau granted, in the alternative, waivers of both the CEI rules and the *Computer II* rules in order to permit the BOCs to continue to provide existing enhanced services.

²⁶ MCI Comments at 10-11.

consideration in Congress would require the BOCs to provide long distance through a separate subsidiary.²⁷ The Department of Justice recently reaffirmed its support for separate subsidiaries for video programming and in-region long distance services.²⁸ Furthermore, as noted above, the recent modification of the MFJ to permit the BOCs to carry cellular interexchange calls requires that the entity providing this service be "physically and operationally" separate from the BOCs' local exchange companies.²⁹ This is a cost that the BOCs will be required to incur, regardless of the Commission's decision in this docket. Therefore, the Commission should recognize the significant cost savings that could be realized by combining these operations.³⁰

Finally, as the BOCs concede, they have not yet extensively entered enhanced businesses other than voice mail. Thus, there are virtually no costs associated with separating out currently integrated electronic publishing services, if any exist.

In short, one should not view in isolation the "cost" of maintaining a separate subsidiary for enhanced services. The BOCs have many opportunities to save costs, by combining their operations with one or more existing or future members of the BOC

²⁷ See, e.g., S. 652, 104th Cong., 1st. Sess. (1995).

²⁸ Statement of Anne K. Bingaman, Assistant Attorney General, Antitrust Division, before the Subcommittee on Antitrust, Business Rights and Competition, Committee on the Judiciary, United States Senate (May 3, 1995), at Attachment, pp. 3, 6.

²⁹ *Cellular Interexchange Modification*, at 16.

³⁰ See LDDS Comments at 6.

corporate family. The BOCs' cost estimates inflate the cost of a separate subsidiary by ignoring these cost savings.

IV. THE MEANS OF DISCRIMINATION ARE VARIED AND NEARLY IMPOSSIBLE TO CONTAIN WITHOUT STRUCTURAL SEPARATION

In assessing the extent to which elimination of a structural separation requirement would increase the risk of discrimination, the Commission must consider the myriad ways in which discrimination could occur. As explained in the study conducted by Hatfield Associates, Inc., the BOCs have both the incentive and the ability to discriminate in all of the following areas:

- Architecture of the network, including choice of topography, functional design, interface requirements, and signalling protocols,
- Network design implementing the architecture,
- The timing and geographic scope of network deployment,
- Operation, monitoring, testing, and maintenance of network features, and
- The integration of new technologies and features into the network.³¹

Each of these areas often involve complex technologies, which makes it easier for the BOCs to manipulate the issue in ways that favor their own business interests. As a result, the BOCs' opportunities to discriminate are almost limitless.

³¹ Hatfield Associates, Inc., *ONA: A Promise Not Realized -- Reprise*, Apr. 6, 1995, submitted in this docket by Compuserve, et al. on April 7, 1995.

The BOCs' conduct in the voice mail market provides many examples of the varied means the BOCs have available to discriminate. In the MemoryCall case, for example, the Georgia PSC found that BellSouth had abused its monopoly to favor its voice mail service in several ways, including:

- use of its control over switching equipment to limit competitors to inferior service arrangements,
- refusing to allow competitors to collocate their voice mail equipment, as MemoryCall equipment was, thereby giving competitors lower quality services and higher costs,
- manipulating the timing of unbundling and network deployment in order "to maximize its competitive advantage."³²

Just as important for any assessment of the efficacy of non-structural substitutes is that these actions occurred despite the fact that "BellSouth obtained all known necessary regulatory approvals before introducing MemoryCall service."³³ These approvals, of course, included a review of BellSouth's CEI plan for MemoryCall.³⁴ The fact that the abuses discovered could occur despite the approval by all regulatory bodies, including the FCC, is a cautionary reminder of the limits of regulation. Removal of the structural separation requirement -- which shifts the emphasis away from an

³² *Commission's Investigation into Southern Bell Telephone and Telegraph Company's Trial Provision of MemoryCall Service*, at 27-41, Docket No. 4000-U (Ga. PSC, Jun. 4, 1991).

³³ BellSouth Comments at 35.

³⁴ *Id.*

organizational protection toward more regulatory reviews -- would increase the chance of recurrences of the MemoryCall example.

The BOCs' responses to MemoryCall are almost as troubling as the findings themselves. US West characterizes the discrimination as a mere "regulatory disagreement," notwithstanding the substantial effects this "disagreement" had on competitors and the public.³⁵ BellSouth, upon which the decision is binding, instead seeks to redefine "discrimination" to exclude the type of discrimination it engaged in.³⁶ Not surprisingly, therefore, BellSouth then pronounces non-structural regulations "successful" because they "prevented" BellSouth's narrow view of "discrimination."³⁷ Both responses are classic examples of sophistry. BellSouth's actions to favor its MemoryCall service, regardless of the name one gives it, still, at bottom, were designed to use its control over the local exchange bottleneck to gain an advantage for its own voice mail services.

MemoryCall is not the only example of a BOC anticompetitive practice in the enhanced services markets. ATSI, for example, provided a compilation of other examples of discrimination, including routine violations of the CPNI rules, "unhooking" of competitors' customers, and the use of services that are denied to ESP

³⁵ US West Comments at 16 n.33.

³⁶ BellSouth Comments at 8.

³⁷ *Id.* at 13.

competitors.³⁸ ITAA describes how NYNEX obtained competitive information from the Boston Phoenix, a New England newspaper offering audiotext and voice messaging services in connection with personal advertisements, and, once it had the information, it abruptly terminated discussions with the newspaper and sought to force Boston Phoenix to move to a less-desirable access arrangement.³⁹ ITAA also describes how Ameritech abruptly terminated a useful alarm service technology it had deployed, only later, after it entered the alarm monitoring business, to reintroduce the technologies to a fraction of its serving wire centers, and only for ESPs guaranteeing a significant volume of business.⁴⁰

Moreover, the initial comments in this proceeding provided additional examples of how processes created to limit the BOCs' abilities to discriminate can be manipulated in such a way that they become the vehicles for discriminatory actions. A primary example of this is the Information Industry Liaison Committee (IILC). As the affidavit attached to MCI's comments explained, the "consensus" approach of the IILC conveys a significant advantage to the BOCs.⁴¹ Due to the number and size of the BOCs, they are able to dominate IILC through their overwhelming attendance.⁴² The

³⁸ See Letter from Robert J. Butler to William F. Caton, CC Docket No. 95-20 (Dec. 13, 1994).

³⁹ ITAA Comments at 49-50.

⁴⁰ *Id.* at 50-51.

⁴¹ MCI Comments, at Exh. B (Aff. of Peter Guggina) (hereinafter "Guggina Aff. ").

⁴² *Id.* at 19.

BOCs often outnumber all other interests, thereby giving them the ability to shape issues and decisions in ways that favor their own competitive interests.

One result of the fundamental flaws of the IILC is that ESP requests for network changes often are revised, scheduled for investigation, and endlessly studied. For example, MCI describes how IILC Issue #026 (Long Term Unbundling and Network Evolution) has been "sliced up" into several small pieces for separate review and analysis, which will substantially delay the consideration and implementation of this issue.⁴³ GeoNet describes how its efforts to advance the consideration of IILC Issue #044 (Advanced Intelligent Network Access by Non-LEC Resource Element) have been thwarted by LECs, including the decision by six of the eight Tier 1 LECs to withhold AIN technical descriptions from the IILC's review.⁴⁴ Moreover, even when this process finally reaches its "end," implementation of the change is not guaranteed, and often individual LECs further revise the new feature, sacrificing the benefits of uniformity in the process.⁴⁵

A similar flaw has occurred with the ONA process. As ITAA notes, ESPs originally identified five core network elements that would need to be unbundled for ONA to be effective; none of these core elements have been unbundled.⁴⁶ Far from

⁴³ *Id.* at 4, 8.

⁴⁴ GeoNet Comments at 6-9.

⁴⁵ Guggina Aff. at 10-13.

⁴⁶ ITAA Comments at 26-27.

assisting ESPs, the ONA process has added to the business and regulatory obstacles they face.

The comments also detail many instances of BOC discrimination in service and maintenance.⁴⁷ The quarterly non-discrimination reports filed with the FCC are ineffective in identifying these instances, primarily because the reports do not provide quantitative measures of service interruptions, nor do they provide a head to head comparison of service to BOC affiliates with service to unaffiliated ESPs.⁴⁸ Moreover, the Commission's complaint process often is not a realistic option, once the immediate problem has been resolved.⁴⁹ As a result, discrimination in service and maintenance can occur virtually unchecked.

To be sure, a separate subsidiary requirement does not eliminate the possibility that the BOCs will discriminate (or that they will cross-subsidize). However, the requirement would make discrimination such as that which occurred in voice mail more difficult to conduct without detection. Further, if the BOCs operate their enhanced services through separate entities, they would be more likely to need the same access and functionalities the ESPs request in industry fora, and therefore would have less of an incentive to manipulate the process to delay unwanted modifications. In the words of Judge Greene, structural separation is beneficial because it, at a minimum,

⁴⁷ MCI Comments at Exh. C (Letter from Mo. Teleessaging Assoc. (March 30, 1992)); CompuServe Comments at Exhs. A-C.

⁴⁸ See ITAA Comments at 33-34.

⁴⁹ See, e.g., ITAA Comments at 53; Commercial InterNet Exchange Association Comments at 9-10.

"complicates" the task of discrimination.⁵⁰ Because the BOCs' means of discrimination are so varied, this additional complication will help to prevent some forms of discrimination and to identify others more quickly. Therefore, this regulatory protection should not be discarded.

V. CONCLUSION

The record in this proceeding once again shows that the structural separation requirement should be retained. The BOCs did not present sufficient evidence of efficiencies to be gained from integration of any specific enhanced services. Moreover, the primary efficiency identified with respect to voice mail -- that of joint marketing -- allows the BOCs to exploit their monopoly advantage, to the detriment of competition in enhanced services. The BOCs also grossly overstate the cost of establishing and maintaining a separate subsidiary, largely by including irrelevant costs and ignoring significant opportunities for cost savings.

When these factors are considered, and when the varied means of discrimination are considered, it is clear that a requirement that the BOCs conduct enhanced services through subsidiaries that are separate from their local exchange companies is an essential part of any regulatory plan to allow BOC participation in competitive markets. A separate subsidiary will complicated attempted discrimination while making actual

⁵⁰ *Cellular Interexchange Modification* at 17.

discrimination easier to detect. It therefore serves the public interest, and the Commission should reject proposals to eliminate the requirement at this time.

Respectfully submitted,

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